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2002 LITIGATION TEAM

June 19, 2002

Hon. Gladys Kessler
U.S. District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *United States v. Philip Morris Inc.*, No. 99-2496 (GK) (U.S. District Court
for the District of Columbia)

Dear Judge Kessler:

I write on behalf of my client, Philip Morris Incorporated ("Philip Morris"), to notify the Court of a matter that has come to the company's attention relating to the Court's Document Preservation Order entered in this action. On October 19, 1999, this Court entered Order #1—First Case Management Order for Initial Scheduling Conference in this action. Paragraph 7 of Order #1 contains the Court's Document Preservation Order, which states in pertinent part that "[e]ach party shall preserve all documents or other records containing information potentially relevant to the subject matter of this litigation. . . ."

Following the entry of the Document Preservation Order, Philip Morris issued a document preservation notice to its employees, which requires them to retain broad categories of documents subject to that Order. The documents that employees were instructed to retain included electronic mail. Under the company's records management policy, Philip Morris employees are required to print and retain email that is required to be maintained for litigation like the federal lawsuit.

It has come to the attention of Philip Morris that some email of some employees has been inadvertently deleted without having been printed and retained, and the company believes it is likely that some of this email was subject to the Document Preservation Order. While copies of email not retained by one employee often have been retained by another employee, Philip Morris is not aware of any method or procedure it could follow to confirm the existence of at least one copy of any deleted email that was subject to the Order.

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The deletion of email appears to have occurred as follows. Philip Morris has a regular process that the company's Information Systems personnel instituted several years ago whereby email would be periodically deleted from the servers on which the company's email system operates. These system deletions occurred as part of a regular and accepted business practice that has been used for several years for the purpose of alleviating capacity constraints on the company's servers. Without such regular deletions, the servers' memory capacity would become overloaded, causing the servers to malfunction. These regular deletions only occur after advance notice to all affected employees. If employees had followed the company's "print and retain" policy regarding relevant email, this process of regular system deletions would not have been an issue regarding Your Honor's Document Preservation Order. However, it now appears some employees did not fully comply with that "print and retain" policy, even though the company explicitly communicated to its employees, since long before this lawsuit was filed, that the obligation to retain documents that may be relevant to litigation extends to electronic documents, such as email.

Philip Morris has every reason to believe that any failure to retain any relevant email was entirely inadvertent and that no employee intended to circumvent either company policy or the Court's Order. Some employees failed either to print the email or migrate the email to "safe" locations on their computers before it was deleted.

Philip Morris is disclosing this information to the Court because it recognizes the seriousness with which any possible violation of the Court's Orders must be treated, even an unintentional one. Indeed, Philip Morris has taken the following actions as a result of the circumstances described above:

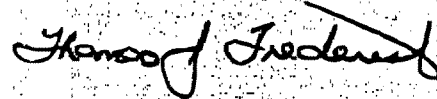
1. Philip Morris has temporarily suspended the process of regular system deletions pending implementation of further measures intended to assure compliance with the Document Preservation Order.
2. Contemporaneously with this letter, Philip Morris is sending a communication to its employees reminding them that (1) they are strictly obligated under the company's Records Management Policy to preserve documents subject to litigation, (2) electronic documents such as email are explicitly covered by the policy, and must be preserved by printing and retaining them, and (3) failure to comply with the obligation to retain documents — whether electronic or otherwise — which are relevant to litigation is a serious offense warranting sanctions up to and including termination.
3. Philip Morris's Records Management organization continues to train and retrain employees regarding their obligation to retain documents related to company litigation. This training involves face-to-face communication and specific instruction on employees' obligations with respect to retaining email.

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I thank the Court in advance for its time and attention to this matter. I stand ready, of course, to answer any questions that the Court might have.

Yours truly,



Thomas J. Frederick

TJF:me

cc: Hon. Richard A. Levie (Ret.)
Shana Malinowski, Esq.
Sharon Y. Eubanks, Esq.
Stephen D. Brody, Esq.
Defense Counsel